



## ESSENTIAL FISH HABITAT

# EFH Consultations

January 2002

### *What is EFH Consultation?*

In 1996, Congress formalized the process by which NOAA Fisheries interacts with other federal agencies on activities that may adversely affect habitats for federally managed species of fish. The new consultation provisions required: (1) federal agencies to consult with NOAA Fisheries if they determine their actions may adversely affect EFH for federally managed species of fish; (2) NOAA Fisheries to provide EFH Conservation Recommendations for any federal or state agency action that would adversely affect EFH; and (3) federal action agencies to respond to those recommendations in writing, and if the action agency disagrees with NOAA Fisheries' advice, it must explain why.

### *How Does EFH Consultation Work?*

EFH consultation provides an opportunity for NOAA Fisheries to recommend ways for federal agencies to avoid or minimize the effects of their actions on habitat that supports federally managed commercial and recreational fisheries.

The procedures for EFH consultation are outlined at 50 CFR 600.920 in the EFH final rule. Consultation is generally initiated when a federal agency notifies NOAA Fisheries of an action that may adversely affect EFH, and provides NOAA Fisheries with an EFH Assessment of the action. In response to the EFH Assessment, NOAA Fisheries provides the federal agency with EFH Conservation Recommendations



to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. Federal agencies must provide a detailed response in writing to NOAA Fisheries that includes proposed measures for avoiding, mitigating, or offsetting the impact of the proposed activity on EFH. If the federal agency chooses not to adopt NOAA Fisheries' EFH Conservation Recommendations, it must provide an explanation. EFH consultation and coordination should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes (such as the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Clean Water Act, and the Federal Power Act). Activities that may warrant EFH consultation include offshore oil-drilling, dredging and disposing of dredge spoil, and the construction of bridges, docks, and bulkheads.

### *Types of Consultations*

The EFH final rule provides for five types of consultations for agency actions that may adversely affect EFH. These consultations range in level of detail, and the selection of a particular approach for handling EFH consultation depends on the nature and scope of the actions that may adversely effect EFH.

- **Existing Procedures**

EFH consultation can be combined with existing environmental review procedures, such as those used under the National Environmental Policy Act and the Endangered Species Act, to streamline the consultation requirements of the Magnuson-Stevens Act and avoid duplication with other environmental reviews.

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- **Programmatic Consultation**  
Federal agencies and NOAA Fisheries may consult on a programmatic basis (i.e., on a group of similar actions that fall within a program. In most cases, when EFH Conservation Recommendations are accepted by the action agency, no further consultation will be required.
  - **General Concurrence**  
A General Concurrence identifies specific types of federal actions that may adversely affect EFH, but for which no further consultation will generally be required. In order to issue a general concurrence, NOAA Fisheries must determine that the actions do not cause greater than minimal adverse effects on EFH, either individually or cumulatively.
  - **Abbreviated Consultation**  
Abbreviated consultation is only completed if no General Concurrence, programmatic consultation, or existing environmental review process is available or appropriate for the federal action. Abbreviated consultation is performed for those projects that may have an adverse effect on EFH, but that effect will not be substantial.
  - **Expanded Consultation**  
Expanded consultation should be completed when no General Concurrence, programmatic consultation, or existing environmental review process is available or appropriate for the federal action, and that action may result in substantial adverse effects on EFH. Procedures for expanded consultation allow for more detailed analysis of effects and more time for NOAA Fisheries to coordinate with the action agency and develop EFH Conservation Recommendations.

*What about non-federal actions that may adversely affect EFH?*

- **State Agencies:** State agencies are not required to consult with NOAA Fisheries or respond to any EFH Conservation Recommendations NOAA Fisheries provides. However, NOAA Fisheries is required by the Magnuson-Stevens Act to make EFH Conservation Recommendations to state agencies if their actions would adversely impact Essential Fish Habitat.
- **Private Landowners:** Private landowners have NO responsibilities to consult with NOAA Fisheries. Consultation is required ONLY if the project is funded, permitted, or authorized by a federal agency and the project may adversely affect Essential Fish Habitat. In that case, the consultation with NOAA Fisheries will be undertaken by the appropriate federal action agency.

For more information, contact:

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